

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

NAVIGATOR HEARTLAND GREENWAY LLC, Plaintiff, vs. IOWA UTILITIES BOARD, Defendant.	CASE NO. EQCE088024 RULING ON MOTION TO INTERVENE
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A contested hearing on the motion to intervene filed by Sierra Club Iowa Chapter was held before the undersigned on December 2, 2022 as previously scheduled. Upon consideration of the arguments made at the hearing, and having reviewed the file and being otherwise duly advised in the premises, the court rules as follows:

This is an action brought pursuant to the Iowa Open Records Act (Iowa Code chapter 22) in which the plaintiff seeks to enjoin the disclosure of mailing lists it has filed with the plaintiff as part of its efforts to develop a carbon capture pipeline system in the state of Iowa, a project within the defendant's authority. As part of the administrative process to obtain a permit for the project, the defendant has agreed to maintain these records as confidential until the district court rules on the plaintiff's claims of confidentiality under chapter 22. Once this action was commenced, the defendant also agreed to a temporary injunction which would maintain the confidentiality of these documents until a final ruling from the court. The motion for intervention by Sierra Club was filed shortly thereafter; it seeks the ability to intervene (presumably adverse to the position of the plaintiff) both as a matter of right and permissively pursuant to Iowa Rule

of Civil Procedure 1.407. For the reasons noted in this ruling, the court agrees with Sierra Club's request to intervene as a matter of right.

Intervention as a matter of right is allowed under the following circumstances: 1) a statute confers an unconditional right to intervene, or the applicant claims an interest relating to the property or transaction which is the subject of the action; 2) the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and 3) the applicant's interest is not adequately represented by the existing parties. IowaR.Civ.P. 1.407(1)(b); In re A.S., 2016 WL 1359119 *2 (Iowa Ct.App., Case No. 15-2193, filed April 6, 2016).¹ "The test of the right to intervene is interest, not necessity." In re J.C., 857 N.W.2d 495, 508 (Iowa 2014) (citation omitted). A prospective intervenor "is one who is interested in the outcome or result thereof because [it] has a legal right which will be directly affected thereby...." Id. The intervention rules are remedial in nature and are to be liberally construed to reduce litigation and expeditiously determine matters before the court. Rick v. Boegel, 205 N.W.2d 713, 717 (Iowa 1973); Schimerowski v. Iowa Beef Packers, Inc., 196 N.W.2d 551, 555 (Iowa 1972).

The plaintiff resists Sierra Club's effort at intervention on the basis that it never made an open records request for the lists, and therefore does not have an adequate legal interest in the proceedings. In making this argument, the plaintiff fails to recognize the interest created in the Iowa Records Act itself:

Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record.

¹ A.S. also listed as an additional element that the motion for intervention be timely. Id. The timeliness of the present application is not at issue.

Iowa Code §22.2(1); see also Mitchell v. City of Cedar Rapids, 926 N.W.2d 222, 229 (Iowa 2019) (“The [Open Records] Act essentially gives all persons the right to examine public records...[but] then lists specific categories of records that must be kept confidential...” (citation omitted). The ability of Sierra Club to exercise this right (i.e., examine the mailing lists) is directly affected by whether those lists are deemed confidential or are treated as a public record. This satisfies the first two elements for allowing intervention as a matter of right.

As to the third element, the court is not convinced that the interests in fully litigating the status of the mailing lists as public records are going to be adequately represented by the defendant. At this point, all it has stated is more of a “wait and see” approach which is dependent upon the outcome of the current litigation, without taking a particularly strong position either way on the dispute. The court gets the sense that the defendant would be perfectly fine with maintaining the mailing lists as confidential; even if this suspicion is inaccurate, the remedial purpose behind mediation would be furthered by allowing Sierra Club to intervene, as its interest in fully addressing the status of these lists as public records has not been questioned.

IT IS THEREFORE ORDERED that the motion for intervention of Sierra Club Iowa Chapter is granted. The petition for intervention is deemed filed as of the date of this ruling, in the form submitted with the motion.² The plaintiff’s motion to strike the petition for intervention is denied. The clerk of court shall amend the caption in this matter to reflect the status of the intervenor.

² The petition for intervention was initially filed as a separate pleading, rather than as an attachment to the motion. See IowaR.Civ.P. 1.407(3) (motion for intervention “shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought”).



State of Iowa Courts

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EQCE088024

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UTILITIES BOARD
Type: OTHER ORDER

So Ordered

Michael D. Huppert, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2022-12-07 15:48:09